

2012 – just two weeks before the deadline for filing summary judgment papers. This was after the deadline for discovery had passed and long after Plaintiff’s expert reports were due. Despite their refusal to produce data on rebates – data that Defendants had in their possession and was plainly accessible – Defendants subsequently submitted a small sampling of the data with the Declaration of Nicholas Bonn In Support of Defendants’ Motion for Summary Judgment to prove that Defendants complied with the Exemption defense. The most appropriate remedy for such discovery shenanigans is to strike the defense and preclude the evidence.

WHEREFORE, for the reasons set forth more fully in Plaintiff’s Memorandum of Law, Plaintiff respectfully requests that the Court:

1. Issue an order striking Defendants’ Prohibited Transaction Exemption 2006-16 defense;
2. Issue an order precluding Defendants from offering evidence on loan rebates.

Dated: July 13, 2012

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH LOCAL RULES 7.1 AND 37.1

I, Gregory Porter, hereby certify that I conferred with Lori A. Martin, Jeffrey Rudman, and Brad Konstandt, counsel for the Defendants, on two or more occasions regarding the instant motion. I also corresponded with Defendants counsel on several occasions reminding them of their discovery obligations and their failure to produce the requested data addressed in the instant motion, as detailed in the accompanying memorandum of law. Counsel were unable to resolve or narrow the issues.

/s/ Gregory Y. Porter

Gregory Y. Porter

CERTIFICATE OF SERVICE

I hereby certify that on July 13, 2012, I caused a copy of the **“Plaintiff’s Motion to Strike Defendants’ Prohibited Transaction Exemption 2006-16 Defense and/or Preclude Defendants from Offering Evidence of Related Rebates”** to Be Served Electronically, Via The Electronic Filing System, On The Registered Participants As Identified on the Notice of Electronic Filing (NEF) and by first-class mail on those indicated as non-registered participants.

/s/Gregory Y. Porter